

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5549 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Points Nos.1 to 5 - No.

VITTHALBHAI H PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AL SHARMA for Petitioner

SERVED for Respondents Nos. 1 to 3.

MR KETAN A DAVE for Respondent No. 4 (absent)

MR DA BAMBHANIA for Respondent No. 5 (absent)

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/04/97

ORAL JUDGEMENT

Here is one more petition by a victim of usual bureaucratic redtapism and pathetic attitude of the respondents. The facts leading to the petition are as under:

The petitioner, a matriculate, joined the service as Secondary School Teacher on 13th June, 1938. On 15th May, 1948, the then Government of Bombay passed a resolution providing for the pay-scales for the school teachers. Under the said resolution different scales were provided for trained teachers and untrained teachers. Those who possessed STC (Secondary Training Certificate) qualification were treated as trained teachers. The said resolution further resolved that those untrained secondary teachers who had completed 10 years' service on 1st June, 1948, would be considered as trained teachers. Under the said resolution the petitioner was paid salary of a trained teacher. The petitioner thus served till he reached the age of superannuation and retired from service on 30th July, 1969. Upon his retirement the question of determination of his pension arose. The respondent No.4 authority raised an objection against the scale of a trained teacher sanctioned to the petitioner since the petitioner had not completed 10 years' service as on 1st June, 1948. Petitioner, therefore, made an application to the Government to condone short fall of 13 days in completing 10 years' service as on 1st June, 1948. Said application is still pending for consideration by the Government. Pending the aforesaid issue of condonation of short fall in completion of 10 years' service as on 1st June, 1948, the respondent No.4 made a provisional pension order sanctioning a monthly pension of Rs.67/- to the petitioner. A copy of the said order is annexed to the petition at Annexure-K. Ever since the petitioner has been receiving a monthly pension of Rs.67/- the petitioner has been constantly approaching the Government for deciding his application for condonation of short fall in completion of 10 years' service as on 1st June, 1948. Petitioner has also been approaching the Government for finalization of his pension or atleast revising it from time to time as is done in cases of other pensioners. Petitioner's requests seem to have fallen on deaf ears. The petitioner has not been permitted to draw a minimum pension which is determined by the government and revised from time to time.

The facts stated in this petition are not disputed. In spite of the order made by this court on 30th July, 1996 neither of the respondents has cared to file its affidavit in reply to the petition.

Ordinarily, this court would be loath to make any order which the administrative authority is required to make in exercise of its executive power. However, in the present case, it must be noted that the issue has been

pending before the Government for nearly 30 years and the petitioner who has crossed the age of 85 years has been denied his rightful claim to pension.

In the circumstances this petition is allowed and the directions are issued as under:

(a) The petitioner's application for condonation of short fall of 13 days in completion of 10 years' service as on 1st June, 1948 shall stand accepted. It is declared that the petitioner was entitled to the pay-scale of a matriculate trained teacher.

(b) The petitioner's pension as on 1st August, 1969 shall be determined on the basis of last pay received by him in the scale of trained matriculate teacher within a period of four months from today.

(c) The petitioner's other retirement benefits like gratuity, commuted value of pension and any other unpaid benefits shall be calculated on the above referred basis and be paid to the petitioner within a period of four months as aforesaid.

(d) The petitioner shall be entitled to receive interest at the rate of 12% per annum on the amount of difference of pension and other retiral benefits to be paid to him under this order from the date they became due for payment till the date of realization.

(e) In the event, the petitioner is not paid pension and other retiral benefits within the period of four months as directed hereinabove, he shall be entitled to further interest at the rate of 12% per annum on such amount from the date of this order till the date of realization.

Petition is allowed in the aforesaid extent. Rule is made absolute. The respondents shall pay the costs of this petition to the petitioner. The cost is quantified at Rs.5,000/-(Five thousand). Registry is directed to send the writ forthwith.
